MALAKOFF BHD. KUALA MUDA ESTATE, SUNGAI PETANI, KEDAH

v.

KUPPUSAMY SENGGARAM & ORS.

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[CIVIL APPEAL NO. 16-07-88]
15 AUGUST 1990

LABOUR LAW: *Termination benefits - Employment (Termination and Lay-off Benefits) Regulations 1980.*

The respondents were employees of (KM), working at the Kuala Muda Estate in Sungai Petani. In 1983, KM entered into a collective agreement (the KM agreement) with NUPW. In 1986, Kuala Muda Estate changed hands when the appellants acquired ownership of it from KM. The respondents continued in their employment with the appellant without any break in service and subject to the same terms and conditions as set out in the collective agreement. According to Clause 11(a) of the agreement, the agreement was supposed to expire on 30 September 1986 but if no new agreement has been drawn up to replace it, it would continue in force.

Some four months after the appellants took over ownership of the Kuala Muda Estate, the appellants issued to each of the respondents one month's notice of termination of service on the ground that they respondents have all reached retirement age of 55. On 23 July 1986, the respondents stopped work.

The respondents claimed that under the agreement, there was no provision for retirement; that being so, they claimed termination benefits under the Employment (Termination and Lay-off Benefits) Regulations 1980. The appellants, however, claimed that the respondents were subject to the terms of the Industrial Court Award 111 of 1986, which stated that the age of retirement was fixed at 55. The Assistant Director of Labour, Sungai Petani held on 20 June 1988 that the 19 respondents were entitled to termination benefits under the 1980 Regulations. The appellants appealed.

Held:

[1] An interpretation of a consent Award 146/87 which applied Award 111/86 show that Award 111/86 took effect retrospectively from 1 April 1987.

[2] With the collective agreement still in force on the relevant date, the appellants could have selectively relied on one stipulation only in regard to the retirement age in the award in order to issue the termination letters to the respondents.

[3] The enquiry officer did not err when he made a finding of fact that the KM agreement applied to the respondents. The agreement was silent on the age of retirement and therefore the 19 respondents were entitled to their claim for termination benefits under reg. 4(i)(a) of the 1980 Regulations.

[Appeal dismissed]

Legislation referred to:
Employment (Termination and Lay-off Benefits) Regulations 1980, reg. 4(1)(a)
Industrial Relations Act 1967, s. 17(2)

For the respondent - Kuppusamy; M/s. P. Kuppusamy & Co.
For the appellant - C. Shanmugaiah; M/s. C. Shanmugaiah & Co.

JUDGMENT

KC Vohrah J:

This is an appeal against the decision of the Assistant Director of Labour, Sungai Petani made on 20 June 1988. He held that the 19 complainants (the respondents in this appeal) whose services were terminated by Malakoff Berhad (the appellants in this case) were entitled to termination benefits under the Employment (Termination and Lay-off Benefits) Regulations 1980.

The 19 respondents were originally employees of Kew Man & Co. Sdn. Bhd. (Kew Man), and worked at Kuala Muda Estate, Sungai Petani. In 1983 Kew Man entered into a collective agreement (the Kew Man agreement) with the National Union of Plantation Workers (NUPW) in which the 19 respondents together with other employees of the estate were members in benefit.

Kew Man sold Kuala Muda Estate where the 19 respondents had their employment to Malakoff Berhad, the appellants, and the change of ownership took place on 15 February 1986.

It is not disputed that on this date, 15 February 1986, the appellants offered continued employment to all former employees of Kew Man at Kuala Muda Estate including the 19 respondents without a break in service in the same capacity and on the same terms and conditions as set out in the Kew Man agreement. The 19 respondents accepted the offer and continued their service under the appellants with the Kew Man agreement governing their terms and conditions of service.

The Kew Man agreement, when it was entered into between Kew Man and NUPW, was under Clause 11(a), expressed to be for a period of three years from 1 October 1983 and "thereafter, until superseded by a new agreement or terminated as provided herein". In other words it was supposed to expire only on 30 September 1986 and if there was no new agreement the Kew Man agreement was to continue in force.

On 23 June 1986, before expiry of the Kew Man agreement, about 4 months after taking over the Kuala Muda Estate, the appellants issued to each of the 19 respondents one month's notice of termination of service either on the ground that the worker had attained or that he was past the retirement age of 55. And the 19 stopped work on 23 July 1986.

The 19 respondents say that under the Kew Man agreement there is no clause relating to the age for retirement. That being so they argue that they are entitled to termination benefits payments under reg. 4(1)(a) of the Employment (Termination and Lay-off Benefits) Regulations 1980 (PU (A) 338 of 1983) (the Regulations) which reads:

> 4(1) ... an employee shall be entitled to termination benefit payment where his contract of service is terminated for any reason whatsoever otherwise than:
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> (a) by the employer, upon the employee attaining the age of retirement if the contract of service contains a stipulation in that behalf; or
>
> (b) ...
>
> (c) ...

The appellants, however, say that the respondents are governed by and are entitled to retirement benefits not under the Kew Man agreement but under Industrial Court Award 111 of 1986 (*Persatuan Pengeluar-Pengeluar Pertanian Tanah Melayu & Kesatuan Kebangsaan Pekerja-Pekerja Ladang* [1986] 1 ILR 586); and that that Article 44 of the award stipulates the age of retirement as 55 and that the 19 respondents were retired under that stipulation and therefore are not entitled to termination benefits. It is necessary, however, to give a background of Award 111 of 1986.

The appellants are with the Malayan Agricultural Producers Association (MAPA). A dispute between MAPA and NUPW was referred to the Industrial Court and was resolved by an award on 30 April 1986, Award 111 of 1986, with retrospective effect from 1 September 1984. The award binds both MAPA and NUPW. Malakoff Berhad, the appellants, comprised one of the companies which authorised MAPA to negotiate with NUPW. It has to be noted here that the dispute was referred to the Industrial Court on 5 February 1986 and the appellants made the offer of employment under the terms of the Kew Man agreement on 15 February 1986 with no reservation that the terms would be subject to the award by the Industrial Court in respect of the dispute referred to the Court on 5 February 1986. In any event the appellants do not deny that they did not apply the articles in Award 111 of 1986 in respect of their employees in Kuala Muda Estate (where the 19 respondents worked) after the date of the award though, strangely, the appellants insist they applied the stipulation in the said award as regards the retirement age.

There is reference to Award 111 of 1986 in another award of the Industrial Court, Award No. 146 of 1987 (the Consent Award) (*Malakoff Berhad, Kedah & National Union of Plantation Workers* [1987] 1 ILR 437), dated 28 April 1987 which is relevant to this case. This Consent Award applied Award 111 of 1986 to the employees of the Kuala Muda Estate as from 1 April 1987.

Paragraph 1 of the Consent Award is pertinent and is reproduced below:

Malayan Agricultural Producers Association (MAPA) and the National Union of Plantation Workers (NUPW) were the parties before the Court in Award No. 111 of 1986. Kuala Muda Estate, Sungai Petani, Kedah, (the Estate) was bought over by Malakoff Berhad (the company) from Kew Man Company Sdn. Bhd., on February 1986. Malakoff Berhad is one of the companies which authorised MAPA to negotiate with NUPW and is listed in Appendices A1 and A2 of Award No. 111 of 1986. Kew Man Company Sdn. Bhd., had a separate collective agreement with NUPW, on terms and conditions not as favourable as those in Award No. 111 of 1986. **After the purchase, NUPW sought to upgrade the terms and conditions of work for its employees in the Estate to those in Award No. 111 of 1986. When the company refused to do so, NUPW filed a complaint of non-compliance on 11 March 1987.** (Emphasis mine)

It will be noted from the above that the complaint of non-compliance by the appellants with Award 111 of 1986 was filed on 11 March 1987 and it will be remembered that the letters of termination purportedly based on Article 44 of Award 111 of 1986 was sent on 23 June 1986 to the 19 respondents.

The witness for the appellants at the enquiry, the manager of the Kuala Muda Estate, stated that from 1 February 1986 (when the appellants took over the estate) while all the employees of the estate were paid according to the terms of the Kew Man agreement, however, in respect of the retirement of the employees he relied on Article 44 of Award 111 of 1986 which stipulates

the retirement age as 55. In other words on 23 June 1986 when he issued the termination letters to the 19 respondents he relied selectively on Article 44 of the said award, Award 111 of 1986 but not on the terms thereof relating to wages.

He said the terms of the Consent Award which provided for "the relevant provisions of Industrial Court Award 111 of 1986" to take effect from 1 April 1987 did not include Article 44; it appears that what he meant is that the Consent Award took into account that Article 44 of Award 111 of 1986 applied to the estate employees when the letters of termination were given.

Now the relevant sub paragraphs of para. 2 of the Consent Award, Award 146 of 1987, do not so state or so imply. They read as follows (references in the award to "company and estate" are to the appellants and Kuala Muda Estate respectively):

> 2. Before us, NUPW and the company reached a settlement as follows:
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> (i) The estate and NUPW will abide by the relevant provisions of Industrial Court Award No. 111/1986 dated 30 April 1986 but with effect from 1 April 1987.
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> (ii) The NUPW recognises and agrees that with the coming into force of this agreement, it will be necessary for consequential changes to be made by the estate to change the current practice followed in accordance with the expired memorandum of agreement between the National Union of Plantation Workers and Messrs. Kew Man Company Sdn. Bhd. (Kuala Muda Estate and Foothills Estate), on rates of pay and other conditions of service for employees employed on the said estates.
>
> (iii) ...

The terms set out above, to my mind, show that Award 111 of 1986 dated 30 April 1986 took effect retrospectively from 1 April 1987. The argument that para. 2(i) refers to the implementation of 'relevant provisions' of the award with effect from 1 April 1987 and that the expression 'relevant provisions' does not include Article 44 of Award 111 of 1986 stipulating the retirement age and that Article 44 was already implemented before 1 April 1987 cannot hold water. As was adverted to earlier, the estate manager of the applicants gave evidence at the enquiry. He also stated that he participated in drawing up the agreement in the Consent Award and what was meant by relevant provisions was as enumerated by him and which were provisions including Part III covering general and field workers and which had to be implemented from 1 April 1987. But Part III starts with Article 23 and ends with Article 48 and clearly Article 44 relating to the age of retirement is within Part III. I fail to see how the manager can possibly state that Article 44 was excluded from application. Award 111 of 1986 has terms relating not only to rubber tappers and to field and general workers but also to palm oil mill employees. Kuala Muda Estate has no palm oil mill and it seems clear that the expression "relevant provisions" was put in to exclude those terms in Award 111 of 1986 relating to palm oil mill employees. My view is that sub-paragraphs. (i) and (ii) of para. 2 of the Consent Award reflect what was existing before it was made - that Award 111 of 1986 which was supposed to have been implemented was not in force for the employees of Kuala Muda Estate - and the agreement that was in force and applied to them was the Kew Man agreement which expired under its terms on 30 September 1986 but which continued till 31 March 1987, one day before the Consent Award came into force and this is consistent with s. 17(2) of the Industrial Relations Act 1967; its continuance was in accordance with Clause 11(a) as it states, "This agreement shall take effect from 1 October 1983 and shall continue to remain in force for a period of 3 years and thereafter, until superseded by

a new agreement ..." As of 1 April 1987, the date the Consent Award of 146 of 1987 took effect the Kew Man agreement became superseded by Award 111 of 1986. I fail to see how with the Kew Man agreement being in force on the relevant date the appellants could have selectively relied on one stipulation only in regard to the retirement age in non-applicable Award 111 of 1986 to give termination letters to the 19 respondents.

I do not see how can be said that the enquiry officer erred when he made a finding that the Kew Man agreement applied to the 19 respondents. The said Kew Man agreement was silent on the age for retirement and therefore the 19 respondents were entitled to their claim for termination benefits payments under reg. 4(i)(a) of the Regulations. The appeal is dismissed with costs.

Also found at [1990] 2 CLJ 804